

AMENDED IN ASSEMBLY JUNE 23, 2014

AMENDED IN ASSEMBLY JUNE 9, 2014

AMENDED IN SENATE MAY 7, 2014

**SENATE BILL**

**No. 1412**

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**Introduced by Senator Nielsen**

February 21, 2014

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An act to amend Sections 1367, 1368, 1368.1, 1369, 1369.1, 1370, 1370.01, 1370.1, 1370.5, 1371, 1373, and 1375.5 of, to add Section 1370.02 to, and to repeal Section 1367.1 of, the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1412, as amended, Nielsen. Criminal proceedings: mentally incompetent offenders.

(1) Existing law prohibits a person from being tried or adjudged to punishment while that person is mentally incompetent. Existing law establishes a process by which a defendant's mental competency is evaluated and by which the defendant receives treatment, including, if applicable, antipsychotic medication, with the goal of returning the defendant to competency. Existing law credits time spent by a defendant in a state hospital or other facility as a result of commitment during the process toward the term of any imprisonment for which the defendant is sentenced.

This bill would, similarly, prohibit a person from having his or her probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. The bill would establish a process by which the person's mental competency is evaluated and by which the defendant receives treatment, including, if

applicable, antipsychotic medication, with the goal of returning the person to competency. The bill would credit time spent by a defendant in a state hospital or other facility as a result of commitment during the process toward the period of revocation or the remaining term of supervision that was suspended. If a defendant is found mentally incompetent during postrelease community supervision or parole revocation hearings, the bill would allow the court to order the defendant to undergo treatment, dismiss the pending revocation matter and return the defendant to supervision, in which case the bill would allow the court to modify the terms and conditions of supervision or refer the matter to the public guardian of the county to initiate conservatorship proceedings, or refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant. By increasing the duties of local officials, including the county mental health director and county public guardian, the bill would impose a state-mandated local program.

If a person subject to parole due to a conviction for an offense of first or 2nd degree murder or a registerable sex offense in which one or more of the victims of the offense was a child under 14 years of age is found mentally incompetent, the bill would require the court to order the person to undergo treatment to restore mental competency. If his or her mental competency is not restored, the bill would establish procedures for his or her supervision or referral, as specified.

The bill would also make conforming changes.

(2) During the pendency of an action in a case in which the defendant has been charged with a misdemeanor, if the defendant's behavior leads the judge to conclude that the defendant is mentally disordered and incompetent to stand trial, existing law requires the judge to state the conclusion in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally disordered. Existing law requires the court to order the defendant to be referred for evaluation and treatment, as specified, if counsel for the defendant informs the court that he or she believes the defendant is or may be mentally disordered.

This bill would repeal those provisions.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1367 of the Penal Code is amended to  
2 read:

3 1367. (a) A person cannot be tried or adjudged to punishment  
4 or have his or her probation, mandatory supervision, postrelease  
5 community supervision, or parole revoked while that person is  
6 mentally incompetent. A defendant is mentally incompetent for  
7 purposes of this chapter if, as a result of mental disorder or  
8 developmental disability, the defendant is unable to understand  
9 the nature of the criminal proceedings or to assist counsel in the  
10 conduct of a defense in a rational manner.

11 (b) Section 1370 shall apply to a person who is charged with a  
12 felony or alleged to have violated the terms of probation *for a*  
13 *felony* or mandatory supervision and is incompetent as a result of  
14 a mental disorder. Section 1370.01 shall apply to a person who is  
15 charged with a misdemeanor or misdemeanors only, or a violation  
16 of formal or informal probation for a misdemeanor, and the judge  
17 finds reason to believe that the defendant is mentally disordered,  
18 and may, as a result of the mental disorder, be incompetent to stand  
19 trial. Section 1370.1 shall apply to a person who is incompetent  
20 as a result of a developmental disability and shall apply to a person  
21 who is incompetent as a result of a mental disorder, but is also  
22 developmentally disabled. Section 1370.02 shall apply to a person  
23 alleged to have violated the terms of his or her postrelease  
24 community supervision or parole.

25 SEC. 2. Section 1367.1 of the Penal Code is repealed.

26 SEC. 3. Section 1368 of the Penal Code is amended to read:

27 1368. (a) If, during the pendency of an action and prior to  
28 judgment, or during revocation proceedings for a violation of  
29 probation, mandatory supervision, postrelease community  
30 supervision, or parole, a doubt arises in the mind of the judge as  
31 to the mental competence of the defendant, he or she shall state  
32 that doubt in the record and inquire of the attorney for the defendant  
33 whether, in the opinion of the attorney, the defendant is mentally

1 competent. If the defendant is not represented by counsel, the court  
2 shall appoint counsel. At the request of the defendant or his or her  
3 counsel or upon its own motion, the court shall recess the  
4 proceedings for as long as may be reasonably necessary to permit  
5 counsel to confer with the defendant and to form an opinion as to  
6 the mental competence of the defendant at that point in time.

7 (b) If counsel informs the court that he or she believes the  
8 defendant is or may be mentally incompetent, the court shall order  
9 that the question of the defendant's mental competence is to be  
10 determined in a hearing which is held pursuant to Sections 1368.1  
11 and 1369. If counsel informs the court that he or she believes the  
12 defendant is mentally competent, the court may nevertheless order  
13 a hearing. Any hearing shall be held in the superior court.

14 (c) Except as provided in Section 1368.1, when an order for a  
15 hearing into the present mental competence of the defendant has  
16 been issued, all proceedings in the criminal prosecution shall be  
17 suspended until the question of the present mental competence of  
18 the defendant has been determined.

19 If a jury has been impaneled and sworn to try the defendant, the  
20 jury shall be discharged only if it appears to the court that undue  
21 hardship to the jurors would result if the jury is retained on call.

22 If the defendant is declared mentally incompetent, the jury shall  
23 be discharged.

24 SEC. 4. Section 1368.1 of the Penal Code is amended to read:

25 1368.1. (a) If the action is on a complaint charging a felony,  
26 proceedings to determine mental competence shall be held prior  
27 to the filing of an information unless the counsel for the defendant  
28 requests a preliminary examination under the provisions of Section  
29 859b. At such preliminary examination, counsel for the defendant  
30 may (1) demur, (2) move to dismiss the complaint on the ground  
31 that there is not reasonable cause to believe that a felony has been  
32 committed and that the defendant is guilty thereof, or (3) make a  
33 motion under Section 1538.5.

34 (b) If the action is on a complaint charging a misdemeanor,  
35 counsel for the defendant may (1) demur, (2) move to dismiss the  
36 complaint on the ground that there is not reasonable cause to  
37 believe that a public offense has been committed and that the  
38 defendant is guilty thereof, or (3) make a motion under Section  
39 1538.5.

1 (c) If the proceeding involves an alleged violation of probation,  
2 mandatory supervision, postrelease community supervision, or  
3 parole, counsel for the defendant may move to reinstate supervision  
4 on the ground that there is not probable cause to believe that the  
5 defendant violated the terms of his or her supervision.

6 (d) In ruling upon any demurrer or motion described in  
7 subdivision (a), (b), or (c), the court may hear any matter which  
8 is capable of fair determination without the personal participation  
9 of the defendant.

10 (e) A demurrer or motion described in subdivision (a), (b), or  
11 (c) shall be made in the court having jurisdiction over the  
12 complaint. The defendant shall not be certified until the demurrer  
13 or motion has been decided.

14 SEC. 5. Section 1369 of the Penal Code is amended to read:

15 1369. Except as stated in subdivision (g), a trial by court or  
16 jury of the question of mental competence shall proceed in the  
17 following order:

18 (a) The court shall appoint a psychiatrist or licensed  
19 psychologist, and any other expert the court may deem appropriate,  
20 to examine the defendant. In any case where the defendant or the  
21 defendant's counsel informs the court that the defendant is not  
22 seeking a finding of mental incompetence, the court shall appoint  
23 two psychiatrists, licensed psychologists, or a combination thereof.  
24 One of the psychiatrists or licensed psychologists may be named  
25 by the defense and one may be named by the prosecution. The  
26 examining psychiatrists or licensed psychologists shall evaluate  
27 the nature of the defendant's mental disorder, if any, the  
28 defendant's ability or inability to understand the nature of the  
29 criminal proceedings or assist counsel in the conduct of a defense  
30 in a rational manner as a result of a mental disorder and, if within  
31 the scope of their licenses and appropriate to their opinions,  
32 whether or not treatment with antipsychotic medication is medically  
33 appropriate for the defendant and whether antipsychotic medication  
34 is likely to restore the defendant to mental competence. If an  
35 examining psychologist is of the opinion that antipsychotic  
36 medication may be medically appropriate for the defendant and  
37 that the defendant should be evaluated by a psychiatrist to  
38 determine if antipsychotic medication is medically appropriate,  
39 the psychologist shall inform the court of this opinion and his or  
40 her recommendation as to whether a psychiatrist should examine

1 the defendant. The examining psychiatrists or licensed  
2 psychologists shall also address the issues of whether the defendant  
3 has capacity to make decisions regarding antipsychotic medication  
4 and whether the defendant is a danger to self or others. If the  
5 defendant is examined by a psychiatrist and the psychiatrist forms  
6 an opinion as to whether or not treatment with antipsychotic  
7 medication is medically appropriate, the psychiatrist shall inform  
8 the court of his or her opinions as to the likely or potential side  
9 effects of the medication, the expected efficacy of the medication,  
10 possible alternative treatments, and whether it is medically  
11 appropriate to administer antipsychotic medication in the county  
12 jail. If it is suspected the defendant is developmentally disabled,  
13 the court shall appoint the director of the regional center for the  
14 developmentally disabled established under Division 4.5  
15 (commencing with Section 4500) of the Welfare and Institutions  
16 Code, or the designee of the director, to examine the defendant.  
17 The court may order the developmentally disabled defendant to  
18 be confined for examination in a residential facility or state  
19 hospital.

20 The regional center director shall recommend to the court a  
21 suitable residential facility or state hospital. Prior to issuing an  
22 order pursuant to this section, the court shall consider the  
23 recommendation of the regional center director. While the person  
24 is confined pursuant to order of the court under this section, he or  
25 she shall be provided with necessary care and treatment.

26 (b) (1) The counsel for the defendant shall offer evidence in  
27 support of the allegation of mental incompetence.

28 (2) If the defense declines to offer any evidence in support of  
29 the allegation of mental incompetence, the prosecution may do so.

30 (c) The prosecution shall present its case regarding the issue of  
31 the defendant's present mental competence.

32 (d) Each party may offer rebutting testimony, unless the court,  
33 for good reason in furtherance of justice, also permits other  
34 evidence in support of the original contention.

35 (e) When the evidence is concluded, unless the case is submitted  
36 without final argument, the prosecution shall make its final  
37 argument and the defense shall conclude with its final argument  
38 to the court or jury.

39 (f) In a jury trial, the court shall charge the jury, instructing  
40 them on all matters of law necessary for the rendering of a verdict.

1 It shall be presumed that the defendant is mentally competent  
2 unless it is proved by a preponderance of the evidence that the  
3 defendant is mentally incompetent. The verdict of the jury shall  
4 be unanimous.

5 (g) Only a court trial is required to determine competency in  
6 any proceeding for a violation of probation, mandatory supervision,  
7 postrelease community supervision, or parole.

8 SEC. 6. Section 1369.1 of the Penal Code is amended to read:

9 1369.1. (a) As used in this chapter, "treatment facility"  
10 includes a county jail. Upon the concurrence of the county board  
11 of supervisors, the county mental health director, and the county  
12 sheriff, the jail may be designated to provide medically approved  
13 medication to defendants found to be mentally incompetent and  
14 unable to provide informed consent due to a mental disorder,  
15 pursuant to this chapter. In the case of Madera, Napa, and Santa  
16 Clara Counties, the concurrence shall be with the board of  
17 supervisors, the county mental health director, and the county  
18 sheriff or the chief of corrections. The provisions of Sections ~~1370~~  
19 ~~and 1370.01~~ 1370, 1370.01, and 1370.02 shall apply to  
20 antipsychotic medications provided in a county jail, provided,  
21 however, that the maximum period of time a defendant may be  
22 treated in a treatment facility pursuant to this section shall not  
23 exceed six months. ~~The provisions of Section 1370.02 shall apply~~  
24 ~~to antipsychotic medications provided to a person in a county jail~~  
25 ~~pending revocation of postrelease community supervision,~~  
26 ~~provided, however, that the maximum period of time a defendant~~  
27 ~~may be treated in a treatment facility pursuant to this section shall~~  
28 ~~not exceed one year. The provisions of Section 1370 shall apply~~  
29 ~~to antipsychotic medications provided to a person in a county jail~~  
30 ~~pending revocation of mandatory supervision, provided, however,~~  
31 ~~that the maximum period of time a defendant may be treated in a~~  
32 ~~treatment facility pursuant to this section shall not exceed the~~  
33 ~~remaining period of mandatory supervision imposed pursuant to~~  
34 ~~subparagraph (B) of paragraph (5) of subdivision (h) of Section~~  
35 ~~1170.~~

36 (b) This section does not abrogate or limit any law enacted to  
37 ensure the due process rights set forth in *Sell v. United States*  
38 (2003) 539 U.S. 166.

1 (c) This section shall remain in effect only until January 1, 2016,  
2 and as of that date is repealed, unless a later enacted statute, that  
3 is enacted before January 1, 2016, deletes or extends that date.

4 SEC. 7. Section 1370 of the Penal Code is amended to read:

5 1370. (a) (1) (A) If the defendant is found mentally  
6 competent, the criminal process shall resume, the trial on the  
7 offense charged or hearing on the alleged violation shall proceed,  
8 and judgment may be pronounced.

9 (B) If the defendant is found mentally incompetent, the trial,  
10 the hearing on the alleged violation, or the judgment shall be  
11 suspended until the person becomes mentally competent.

12 (i) In the meantime, the court shall order that the mentally  
13 incompetent defendant be delivered by the sheriff to a state hospital  
14 for the care and treatment of the mentally disordered, or to any  
15 other available public or private treatment facility, including a  
16 local county jail treatment facility, approved by the community  
17 program director that will promote the defendant's speedy  
18 restoration to mental competence, or placed on outpatient status  
19 as specified in Section 1600.

20 (ii) However, if the action against the defendant who has been  
21 found mentally incompetent is on a complaint charging a felony  
22 offense specified in Section 290, the prosecutor shall determine  
23 whether the defendant previously has been found mentally  
24 incompetent to stand trial pursuant to this chapter on a charge of  
25 a Section 290 offense, or whether the defendant is currently the  
26 subject of a pending Section 1368 proceeding arising out of a  
27 charge of a Section 290 offense. If either determination is made,  
28 the prosecutor shall so notify the court and defendant in writing.  
29 After this notification, and opportunity for hearing, the court shall  
30 order that the defendant be delivered by the sheriff to a state  
31 hospital or other secure treatment facility for the care and treatment  
32 of the mentally disordered unless the court makes specific findings  
33 on the record that an alternative placement would provide more  
34 appropriate treatment for the defendant and would not pose a  
35 danger to the health and safety of others.

36 (iii) If the action against the defendant who has been found  
37 mentally incompetent is on a complaint charging a felony offense  
38 specified in Section 290 and the defendant has been denied bail  
39 pursuant to subdivision (b) of Section 12 of Article I of the  
40 California Constitution because the court has found, based upon



1 clear and convincing evidence, a substantial likelihood that the  
2 person's release would result in great bodily harm to others, the  
3 court shall order that the defendant be delivered by the sheriff to  
4 a state hospital for the care and treatment of the mentally disordered  
5 unless the court makes specific findings on the record that an  
6 alternative placement would provide more appropriate treatment  
7 for the defendant and would not pose a danger to the health and  
8 safety of others.

9 (iv) The clerk of the court shall notify the Department of Justice  
10 in writing of any finding of mental incompetence with respect to  
11 a defendant who is subject to clause (ii) or (iii) for inclusion in his  
12 or her state summary criminal history information.

13 (C) Upon the filing of a certificate of restoration to competence,  
14 the court shall order that the defendant be returned to court in  
15 accordance with Section 1372. The court shall transmit a copy of  
16 its order to the community program director or a designee.

17 (D) A defendant charged with a violent felony may not be  
18 delivered to a state hospital or treatment facility pursuant to this  
19 subdivision unless the state hospital or treatment facility has a  
20 secured perimeter or a locked and controlled treatment facility,  
21 and the judge determines that the public safety will be protected.

22 (E) For purposes of this paragraph, "violent felony" means an  
23 offense specified in subdivision (c) of Section 667.5.

24 (F) A defendant charged with a violent felony may be placed  
25 on outpatient status, as specified in Section 1600, only if the court  
26 finds that the placement will not pose a danger to the health or  
27 safety of others. If the court places a defendant charged with a  
28 violent felony on outpatient status, as specified in Section 1600,  
29 the court must serve copies of the placement order on defense  
30 counsel, the sheriff in the county where the defendant will be  
31 placed and the district attorney for the county in which the violent  
32 felony charges are pending against the defendant.

33 (2) Prior to making the order directing that the defendant be  
34 confined in a state hospital or other treatment facility or placed on  
35 outpatient status, the court shall proceed as follows:

36 (A) The court shall order the community program director or a  
37 designee to evaluate the defendant and to submit to the court within  
38 15 judicial days of the order a written recommendation as to  
39 whether the defendant should be required to undergo outpatient  
40 treatment, or committed to a state hospital or to any other treatment

1 facility. No person shall be admitted to a state hospital or other  
2 treatment facility or placed on outpatient status under this section  
3 without having been evaluated by the community program director  
4 or a designee. The community program director or designee shall  
5 evaluate the appropriate placement for the defendant between a  
6 state hospital or a local county jail treatment facility based upon  
7 guidelines provided by the State Department of State Hospitals.  
8 If a local county jail treatment facility is selected, the State  
9 Department of State Hospitals shall provide treatment at the county  
10 jail treatment facility and reimburse the county jail treatment  
11 facility for the reasonable costs of the bed during the treatment.  
12 The six-month limitation in Section 1369.1 shall not apply to  
13 individuals deemed incompetent to stand trial who are being treated  
14 to restore competency within a county jail treatment facility  
15 pursuant to this section.

16 (B) The court shall hear and determine whether the defendant  
17 lacks capacity to make decisions regarding the administration of  
18 antipsychotic medication, and shall proceed as follows:

19 (i) The court shall hear and determine whether any of the  
20 following is true:

21 (I) The defendant lacks capacity to make decisions regarding  
22 antipsychotic medication, the defendant's mental disorder requires  
23 medical treatment with antipsychotic medication, and, if the  
24 defendant's mental disorder is not treated with antipsychotic  
25 medication, it is probable that serious harm to the physical or  
26 mental health of the patient will result. Probability of serious harm  
27 to the physical or mental health of the defendant requires evidence  
28 that the defendant is presently suffering adverse effects to his or  
29 her physical or mental health, or the defendant has previously  
30 suffered these effects as a result of a mental disorder and his or  
31 her condition is substantially deteriorating. The fact that a  
32 defendant has a diagnosis of a mental disorder does not alone  
33 establish probability of serious harm to the physical or mental  
34 health of the defendant.

35 (II) The defendant is a danger to others, in that the defendant  
36 has inflicted, attempted to inflict, or made a serious threat of  
37 inflicting substantial physical harm on another while in custody,  
38 or the defendant had inflicted, attempted to inflict, or made a  
39 serious threat of inflicting substantial physical harm on another  
40 that resulted in his or her being taken into custody, and the

1 defendant presents, as a result of mental disorder or mental defect,  
2 a demonstrated danger of inflicting substantial physical harm on  
3 others. Demonstrated danger may be based on an assessment of  
4 the defendant's present mental condition, including a consideration  
5 of past behavior of the defendant within six years prior to the time  
6 the defendant last attempted to inflict, inflicted, or threatened to  
7 inflict substantial physical harm on another, and other relevant  
8 evidence.

9 (III) The people have charged the defendant with a serious crime  
10 against the person or property, involuntary administration of  
11 antipsychotic medication is substantially likely to render the  
12 defendant competent to stand trial, the medication is unlikely to  
13 have side effects that interfere with the defendant's ability to  
14 understand the nature of the criminal proceedings or to assist  
15 counsel in the conduct of a defense in a reasonable manner, less  
16 intrusive treatments are unlikely to have substantially the same  
17 results, and antipsychotic medication is in the patient's best medical  
18 interest in light of his or her medical condition.

19 (ii) If the court finds any of the conditions described in clause  
20 (i) to be true, the court shall issue an order authorizing the treatment  
21 facility to involuntarily administer antipsychotic medication to the  
22 defendant when and as prescribed by the defendant's treating  
23 psychiatrist. The court shall not order involuntary administration  
24 of psychotropic medication under subclause (III) of clause (i)  
25 unless the court has first found that the defendant does not meet  
26 the criteria for involuntary administration of psychotropic  
27 medication under subclause (I) of clause (i) and does not meet the  
28 criteria under subclause (II) of clause (i).

29 (iii) In all cases, the treating hospital, facility, or program may  
30 administer medically appropriate antipsychotic medication  
31 prescribed by a psychiatrist in an emergency as described in  
32 subdivision (m) of Section 5008 of the Welfare and Institutions  
33 Code.

34 (iv) If the court has determined that the defendant has the  
35 capacity to make decisions regarding antipsychotic medication,  
36 and if the defendant, with advice of his or her counsel, consents,  
37 the court order of commitment shall include confirmation that  
38 antipsychotic medication may be given to the defendant as  
39 prescribed by a treating psychiatrist pursuant to the defendant's  
40 consent. The commitment order shall also indicate that, if the

1 defendant withdraws consent for antipsychotic medication, after  
2 the treating psychiatrist complies with the provisions of  
3 subparagraph (C), the defendant shall be returned to court for a  
4 hearing in accordance with subparagraphs (C) and (D) regarding  
5 whether antipsychotic medication shall be administered  
6 involuntarily.

7 (v) If the court has determined that the defendant has the  
8 capacity to make decisions regarding antipsychotic medication  
9 and if the defendant, with advice from his or her counsel, does not  
10 consent, the court order for commitment shall indicate that, after  
11 the treating psychiatrist complies with the provisions of  
12 subparagraph (C), the defendant shall be returned to court for a  
13 hearing in accordance with subparagraphs (C) and (D) regarding  
14 whether antipsychotic medication shall be administered  
15 involuntarily.

16 (vi) Any report made pursuant to paragraph (1) of subdivision  
17 (b) shall include a description of any antipsychotic medication  
18 administered to the defendant and its effects and side effects,  
19 including effects on the defendant's appearance or behavior that  
20 would affect the defendant's ability to understand the nature of  
21 the criminal proceedings or to assist counsel in the conduct of a  
22 defense in a reasonable manner. During the time the defendant is  
23 confined in a state hospital or other treatment facility or placed on  
24 outpatient status, either the defendant or the people may request  
25 that the court review any order made pursuant to this subdivision.  
26 The defendant, to the same extent enjoyed by other patients in the  
27 state hospital or other treatment facility, shall have the right to  
28 contact the patients' rights advocate regarding his or her rights  
29 under this section.

30 (C) If the defendant consented to antipsychotic medication as  
31 described in clause (iv) of subparagraph (B), but subsequently  
32 withdraws his or her consent, or, if involuntary antipsychotic  
33 medication was not ordered pursuant to clause (v) of subparagraph  
34 (B), and the treating psychiatrist determines that antipsychotic  
35 medication has become medically necessary and appropriate, the  
36 treating psychiatrist shall make efforts to obtain informed consent  
37 from the defendant for antipsychotic medication. If informed  
38 consent is not obtained from the defendant, and the treating  
39 psychiatrist is of the opinion that the defendant lacks capacity to  
40 make decisions regarding antipsychotic medication based on the

1 conditions described in subclause (I) or (II) of clause (i) of  
2 subparagraph (B), the treating psychiatrist shall certify whether  
3 the lack of capacity and any applicable conditions described above  
4 exist. That certification shall contain an assessment of the current  
5 mental status of the defendant and the opinion of the treating  
6 psychiatrist that involuntary antipsychotic medication has become  
7 medically necessary and appropriate.

8 (D) (i) If the treating psychiatrist certifies that antipsychotic  
9 medication has become medically necessary and appropriate  
10 pursuant to subparagraph (C), antipsychotic medication may be  
11 administered to the defendant for not more than 21 days, provided,  
12 however, that, within 72 hours of the certification, the defendant  
13 is provided a medication review hearing before an administrative  
14 law judge to be conducted at the facility where the defendant is  
15 receiving treatment. The treating psychiatrist shall present the case  
16 for the certification for involuntary treatment and the defendant  
17 shall be represented by an attorney or a patients' rights advocate.  
18 The attorney or patients' rights advocate shall be appointed to meet  
19 with the defendant no later than one day prior to the medication  
20 review hearing to review the defendant's rights at the medication  
21 review hearing, discuss the process, answer questions or concerns  
22 regarding involuntary medication or the hearing, assist the  
23 defendant in preparing for the hearing and advocating for his or  
24 her interests at the hearing, review the panel's final determination  
25 following the hearing, advise the defendant of his or her right to  
26 judicial review of the panel's decision, and provide the defendant  
27 with referral information for legal advice on the subject. The  
28 defendant shall also have the following rights with respect to the  
29 medication review hearing:

30 (I) To be given timely access to the defendant's records.

31 (II) To be present at the hearing, unless the defendant waives  
32 that right.

33 (III) To present evidence at the hearing.

34 (IV) To question persons presenting evidence supporting  
35 involuntary medication.

36 (V) To make reasonable requests for attendance of witnesses  
37 on the defendant's behalf.

38 (VI) To a hearing conducted in an impartial and informal  
39 manner.

(ii) If the administrative law judge determines that the defendant either meets the criteria specified in subclause (I) of clause (i) of subparagraph (B), or meets the criteria specified in subclause (II) of clause (i) of subparagraph (B), then antipsychotic medication may continue to be administered to the defendant for the 21-day certification period. Concurrently with the treating psychiatrist's certification, the treating psychiatrist shall file a copy of the certification and a petition with the court for issuance of an order to administer antipsychotic medication beyond the 21-day certification period. For purposes of this subparagraph, the treating psychiatrist shall not be required to pay or deposit any fee for the filing of the petition or other document or paper related to the petition.

(iii) If the administrative law judge disagrees with the certification, medication may not be administered involuntarily until the court determines that antipsychotic medication should be administered pursuant to this section.

(iv) The court shall provide notice to the prosecuting attorney and to the attorney representing the defendant, and shall hold a hearing, no later than 18 days from the date of the certification, to determine whether antipsychotic medication should be ordered beyond the certification period.

(v) If, as a result of the hearing, the court determines that antipsychotic medication should be administered beyond the certification period, the court shall issue an order authorizing the administration of that medication.

(vi) The court shall render its decision on the petition and issue its order no later than three calendar days after the hearing and, in any event, no later than the expiration of the 21-day certification period.

(3) When the court orders that the defendant be confined in a state hospital or other public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other treatment facility where the defendant is to be confined:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

1 (C) A computation or statement setting forth the amount of  
2 credit for time served, if any, to be deducted from the maximum  
3 term of commitment.

4 (D) State summary criminal history information.

5 (E) Any arrest reports prepared by the police department or  
6 other law enforcement agency.

7 (F) Any court-ordered psychiatric examination or evaluation  
8 reports.

9 (G) The community program director's placement  
10 recommendation report.

11 (H) Records of any finding of mental incompetence pursuant  
12 to this chapter arising out of a complaint charging a felony offense  
13 specified in Section 290 or any pending Section 1368 proceeding  
14 arising out of a charge of a Section 290 offense.

15 (4) When the defendant is committed to a treatment facility  
16 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the  
17 court makes the findings specified in clause (ii) or (iii) of  
18 subparagraph (B) of paragraph (1) to assign the defendant to a  
19 treatment facility other than a state hospital or other secure  
20 treatment facility, the court shall order that notice be given to the  
21 appropriate law enforcement agency or agencies having local  
22 jurisdiction at the site of the placement facility of any finding of  
23 mental incompetence pursuant to this chapter arising out of a  
24 charge of a Section 290 offense.

25 (5) When directing that the defendant be confined in a state  
26 hospital pursuant to this subdivision, the court shall select the  
27 hospital in accordance with the policies established by the State  
28 Department of State Hospitals.

29 (6) (A) If the defendant is committed or transferred to a state  
30 hospital pursuant to this section, the court may, upon receiving the  
31 written recommendation of the medical director of the state hospital  
32 and the community program director that the defendant be  
33 transferred to a public or private treatment facility approved by  
34 the community program director, order the defendant transferred  
35 to that facility. If the defendant is committed or transferred to a  
36 public or private treatment facility approved by the community  
37 program director, the court may, upon receiving the written  
38 recommendation of the community program director, transfer the  
39 defendant to a state hospital or to another public or private  
40 treatment facility approved by the community program director.

1 In the event of dismissal of the criminal charges before the  
2 defendant recovers competence, the person shall be subject to the  
3 applicable provisions of the Lanterman-Petris-Short Act (Part 1  
4 (commencing with Section 5000) of Division 5 of the Welfare and  
5 Institutions Code). Where either the defendant or the prosecutor  
6 chooses to contest either kind of order of transfer, a petition may  
7 be filed in the court for a hearing, which shall be held if the court  
8 determines that sufficient grounds exist. At the hearing, the  
9 prosecuting attorney or the defendant may present evidence bearing  
10 on the order of transfer. The court shall use the same standards as  
11 are used in conducting probation revocation hearings pursuant to  
12 Section 1203.2.

13 Prior to making an order for transfer under this section, the court  
14 shall notify the defendant, the attorney of record for the defendant,  
15 the prosecuting attorney, and the community program director or  
16 a designee.

17 (B) If the defendant is initially committed to a state hospital or  
18 secure treatment facility pursuant to clause (ii) or (iii) of  
19 subparagraph (B) of paragraph (1) and is subsequently transferred  
20 to any other facility, copies of the documents specified in paragraph  
21 (3) shall be taken with the defendant to each subsequent facility  
22 to which the defendant is transferred. The transferring facility shall  
23 also notify the appropriate law enforcement agency or agencies  
24 having local jurisdiction at the site of the new facility that the  
25 defendant is a person subject to clause (ii) or (iii) of subparagraph  
26 (B) of paragraph (1).

27 (7) An order by the court authorizing involuntary medication  
28 of the defendant shall be valid for no more than one year. The  
29 court shall review the order six months after the order was made  
30 to determine if the grounds for the authorization remain. In the  
31 review, the court shall consider the reports of the treating  
32 psychiatrist or psychiatrists and the defendant's patients' rights  
33 advocate or attorney. The court may require testimony from the  
34 treating psychiatrist or psychiatrists and the patients' rights  
35 advocate or attorney, if necessary. The court may continue the  
36 order authorizing involuntary medication for up to another six  
37 months, or vacate the order, or make any other appropriate order.

38 (b) (1) Within 90 days of a commitment made pursuant to  
39 subdivision (a), the medical director of the state hospital or other  
40 treatment facility to which the defendant is confined shall make a



1 written report to the court and the community program director  
2 for the county or region of commitment, or a designee, concerning  
3 the defendant's progress toward recovery of mental competence.  
4 Where the defendant is on outpatient status, the outpatient treatment  
5 staff shall make a written report to the community program director  
6 concerning the defendant's progress toward recovery of mental  
7 competence. Within 90 days of placement on outpatient status, the  
8 community program director shall report to the court on this matter.  
9 If the defendant has not recovered mental competence, but the  
10 report discloses a substantial likelihood that the defendant will  
11 regain mental competence in the foreseeable future, the defendant  
12 shall remain in the state hospital or other treatment facility or on  
13 outpatient status. Thereafter, at six-month intervals or until the  
14 defendant becomes mentally competent, where the defendant is  
15 confined in a treatment facility, the medical director of the hospital  
16 or person in charge of the facility shall report in writing to the  
17 court and the community program director or a designee regarding  
18 the defendant's progress toward recovery of mental competence.  
19 Where the defendant is on outpatient status, after the initial 90-day  
20 report, the outpatient treatment staff shall report to the community  
21 program director on the defendant's progress toward recovery,  
22 and the community program director shall report to the court on  
23 this matter at six-month intervals. A copy of these reports shall be  
24 provided to the prosecutor and defense counsel by the court. If the  
25 report indicates that there is no substantial likelihood that the  
26 defendant will regain mental competence in the foreseeable future,  
27 the committing court shall order the defendant to be returned to  
28 the court for proceedings pursuant to paragraph (2) of subdivision  
29 (c). The court shall transmit a copy of its order to the community  
30 program director or a designee.

31 (2) Where the court has issued an order authorizing the treating  
32 facility to involuntarily administer antipsychotic medication to the  
33 defendant, the reports made at six-month intervals concerning the  
34 defendant's progress toward regaining competency shall also  
35 consider the issue of involuntary medication. Each report shall  
36 include, but is not limited to, all the following:

37 (A) Whether or not the defendant has the capacity to make  
38 decisions concerning antipsychotic medication.

39 (B) If the defendant lacks capacity to make decisions concerning  
40 antipsychotic medication, whether the defendant risks serious harm

1 to his or her physical or mental health if not treated with  
2 antipsychotic medication.

3 (C) Whether or not the defendant presents a danger to others if  
4 he or she is not treated with antipsychotic medication.

5 (D) Whether the defendant has a mental illness for which  
6 medications are the only effective treatment.

7 (E) Whether there are any side effects from the medication  
8 currently being experienced by the defendant that would interfere  
9 with the defendant's ability to collaborate with counsel.

10 (F) Whether there are any effective alternatives to medication.

11 (G) How quickly the medication is likely to bring the defendant  
12 to competency.

13 (H) Whether the treatment plan includes methods other than  
14 medication to restore the defendant to competency.

15 (I) A statement, if applicable, that no medication is likely to  
16 restore the defendant to competency.

17 (3) After reviewing the reports, the court shall determine whether  
18 or not grounds for the order authorizing involuntary administration  
19 of antipsychotic medication still exist and shall do one of the  
20 following:

21 (A) If the original grounds for involuntary medication still exist,  
22 the order authorizing the treating facility to involuntarily administer  
23 antipsychotic medication to the defendant shall remain in effect.

24 (B) If the original grounds for involuntary medication no longer  
25 exist, and there is no other basis for involuntary administration of  
26 antipsychotic medication, the order for the involuntary  
27 administration of antipsychotic medication shall be vacated.

28 (C) If the original grounds for involuntary medication no longer  
29 exist, and the report states that there is another basis for involuntary  
30 administration of antipsychotic medication, the court shall set a  
31 hearing within 21 days to determine whether the order for the  
32 involuntary administration of antipsychotic medication shall be  
33 vacated or whether a new order for the involuntary administration  
34 of antipsychotic medication shall be issued. The hearing shall  
35 proceed as set forth in subparagraph (B) of paragraph (2) of  
36 subdivision (a).

37 (4) Any defendant who has been committed or has been on  
38 outpatient status for 18 months and is still hospitalized or on  
39 outpatient status shall be returned to the committing court where  
40 a hearing shall be held pursuant to the procedures set forth in

1 Section 1369. The court shall transmit a copy of its order to the  
2 community program director or a designee.

3 (5) If it is determined by the court that no treatment for the  
4 defendant's mental impairment is being conducted, the defendant  
5 shall be returned to the committing court. The court shall transmit  
6 a copy of its order to the community program director or a  
7 designee.

8 (6) At each review by the court specified in this subdivision,  
9 the court shall determine if the security level of housing and  
10 treatment is appropriate and may make an order in accordance  
11 with its determination. If the court determines that the defendant  
12 shall continue to be treated in the state hospital or on an outpatient  
13 basis, the court shall determine issues concerning administration  
14 of antipsychotic medication, as set forth in subparagraph (B) of  
15 paragraph (2) of subdivision (a).

16 (c) (1) At the end of three years from the date of commitment  
17 or a period of commitment equal to the maximum term of  
18 imprisonment provided by law for the most serious offense charged  
19 in the information, indictment, or misdemeanor complaint, or the  
20 maximum term of imprisonment provided by law for a violation  
21 of probation or mandatory supervision, whichever is shorter, a  
22 defendant who has not recovered mental competence shall be  
23 returned to the committing court. The court shall notify the  
24 community program director or a designee of the return and of  
25 any resulting court orders.

26 (2) Whenever any defendant is returned to the court pursuant  
27 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this  
28 subdivision and it appears to the court that the defendant is gravely  
29 disabled, as defined in subparagraph (B) of paragraph (1) of  
30 subdivision (h) of Section 5008 of the Welfare and Institutions  
31 Code, the court shall order the conservatorship investigator of the  
32 county of commitment of the defendant to initiate conservatorship  
33 proceedings for the defendant pursuant to Chapter 3 (commencing  
34 with Section 5350) of Part 1 of Division 5 of the Welfare and  
35 Institutions Code. Any hearings required in the conservatorship  
36 proceedings shall be held in the superior court in the county that  
37 ordered the commitment. The court shall transmit a copy of the  
38 order directing initiation of conservatorship proceedings to the  
39 community program director or a designee, the sheriff and the  
40 district attorney of the county in which criminal charges are

1 pending, and the defendant's counsel of record. The court shall  
2 notify the community program director or a designee, the sheriff  
3 and district attorney of the county in which criminal charges are  
4 pending, and the defendant's counsel of record of the outcome of  
5 the conservatorship proceedings.

6 (3) If a change in placement is proposed for a defendant who  
7 is committed pursuant to subparagraph (B) of paragraph (1) of  
8 subdivision (h) of Section 5008 of the Welfare and Institutions  
9 Code, the court shall provide notice and an opportunity to be heard  
10 with respect to the proposed placement of the defendant to the  
11 sheriff and the district attorney of the county in which the criminal  
12 charges or revocation proceedings are pending.

13 (4) Where the defendant is confined in a treatment facility, a  
14 copy of any report to the committing court regarding the  
15 defendant's progress toward recovery of mental competence shall  
16 be provided by the committing court to the prosecutor and to the  
17 defense counsel.

18 (d) With the exception of proceedings alleging a violation of  
19 mandatory supervision, the criminal action remains subject to  
20 dismissal pursuant to Section 1385. If the criminal action is  
21 dismissed, the court shall transmit a copy of the order of dismissal  
22 to the community program director or a designee. In a proceeding  
23 alleging a violation of mandatory supervision, if the person is not  
24 placed under a conservatorship as described in paragraph (2) of  
25 subdivision (c), or if a conservatorship is terminated, the court  
26 shall reinstate mandatory supervision and may modify the terms  
27 and conditions of supervision to include appropriate mental health  
28 treatment or refer the matter to a local mental health court, reentry  
29 court, or other collaborative justice court available for improving  
30 the mental health of the defendant.

31 (e) If the criminal action against the defendant is dismissed, the  
32 defendant shall be released from any commitment ordered under  
33 this section, but without prejudice to the initiation of any  
34 proceedings that may be appropriate under the  
35 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
36 5000) of Division 5 of the Welfare and Institutions Code).

37 (f) As used in this chapter, "community program director" means  
38 the person, agency, or entity designated by the State Department  
39 of State Hospitals pursuant to Section 1605 of this code and Section  
40 4360 of the Welfare and Institutions Code.

1 (g) For the purpose of this section, “secure treatment facility”  
2 shall not include, except for state mental hospitals, state  
3 developmental centers, and correctional treatment facilities, any  
4 facility licensed pursuant to Chapter 2 (commencing with Section  
5 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter  
6 3.2 (commencing with Section 1569) of, Division 2 of the Health  
7 and Safety Code, or any community board and care facility.

8 (h) Nothing in this section shall preclude a defendant from filing  
9 a petition for habeas corpus to challenge the continuing validity  
10 of an order authorizing a treatment facility or outpatient program  
11 to involuntarily administer antipsychotic medication to a person  
12 being treated as incompetent to stand trial.

13 SEC. 8. Section 1370.01 of the Penal Code is amended to read:

14 1370.01. (a) (1) If the defendant is found mentally competent,  
15 the criminal process shall resume, the trial on the offense charged  
16 shall proceed, and judgment may be pronounced. If the defendant  
17 is found mentally incompetent, the trial, judgment, or hearing on  
18 the alleged violation shall be suspended until the person becomes  
19 mentally competent, and the court shall order that (A) in the  
20 meantime, the defendant be delivered by the sheriff to an available  
21 public or private treatment facility approved by the county mental  
22 health director that will promote the defendant’s speedy restoration  
23 to mental competence, or placed on outpatient status as specified  
24 in this section, and (B) upon the filing of a certificate of restoration  
25 to competence, the defendant be returned to court in accordance  
26 with Section 1372. The court shall transmit a copy of its order to  
27 the county mental health director or his or her designee.

28 (2) Prior to making the order directing that the defendant be  
29 confined in a treatment facility or placed on outpatient status, the  
30 court shall proceed as follows:

31 (A) The court shall order the county mental health director or  
32 his or her designee to evaluate the defendant and to submit to the  
33 court within 15 judicial days of the order a written recommendation  
34 as to whether the defendant should be required to undergo  
35 outpatient treatment, or committed to a treatment facility. No  
36 person shall be admitted to a treatment facility or placed on  
37 outpatient status under this section without having been evaluated  
38 by the county mental health director or his or her designee. No  
39 person shall be admitted to a state hospital under this section unless  
40 the county mental health director finds that there is no less

1 restrictive appropriate placement available and the county mental  
2 health director has a contract with the State Department of State  
3 Hospitals for these placements.

4 (B) The court shall hear and determine whether the defendant,  
5 with advice of his or her counsel, consents to the administration  
6 of antipsychotic medication, and shall proceed as follows:

7 (i) If the defendant, with advice of his or her counsel, consents,  
8 the court order of commitment shall include confirmation that  
9 antipsychotic medication may be given to the defendant as  
10 prescribed by a treating psychiatrist pursuant to the defendant's  
11 consent. The commitment order shall also indicate that, if the  
12 defendant withdraws consent for antipsychotic medication, after  
13 the treating psychiatrist complies with the provisions of  
14 subparagraph (C), the defendant shall be returned to court for a  
15 hearing in accordance with this subdivision regarding whether  
16 antipsychotic medication shall be administered involuntarily.

17 (ii) If the defendant does not consent to the administration of  
18 medication, the court shall hear and determine whether any of the  
19 following is true:

20 (I) The defendant lacks capacity to make decisions regarding  
21 antipsychotic medication, the defendant's mental disorder requires  
22 medical treatment with antipsychotic medication, and, if the  
23 defendant's mental disorder is not treated with antipsychotic  
24 medication, it is probable that serious harm to the physical or  
25 mental health of the patient will result. Probability of serious harm  
26 to the physical or mental health of the defendant requires evidence  
27 that the defendant is presently suffering adverse effects to his or  
28 her physical or mental health, or the defendant has previously  
29 suffered these effects as a result of a mental disorder and his or  
30 her condition is substantially deteriorating. The fact that a  
31 defendant has a diagnosis of a mental disorder does not alone  
32 establish probability of serious harm to the physical or mental  
33 health of the defendant.

34 (II) The defendant is a danger to others, in that the defendant  
35 has inflicted, attempted to inflict, or made a serious threat of  
36 inflicting substantial physical harm on another while in custody,  
37 or the defendant had inflicted, attempted to inflict, or made a  
38 serious threat of inflicting substantial physical harm on another  
39 that resulted in his or her being taken into custody, and the  
40 defendant presents, as a result of mental disorder or mental defect,

1 a demonstrated danger of inflicting substantial physical harm on  
2 others. Demonstrated danger may be based on an assessment of  
3 the defendant's present mental condition, including a consideration  
4 of past behavior of the defendant within six years prior to the time  
5 the defendant last attempted to inflict, inflicted, or threatened to  
6 inflict substantial physical harm on another, and other relevant  
7 evidence.

8 (III) The people have charged the defendant with a serious crime  
9 against the person or property; involuntary administration of  
10 antipsychotic medication is substantially likely to render the  
11 defendant competent to stand trial; the medication is unlikely to  
12 have side effects that interfere with the defendant's ability to  
13 understand the nature of the criminal proceedings or to assist  
14 counsel in the conduct of a defense in a reasonable manner; less  
15 intrusive treatments are unlikely to have substantially the same  
16 results; and antipsychotic medication is in the patient's best medical  
17 interest in light of his or her medical condition.

18 (iii) If the court finds any of the conditions described in clause  
19 (ii) to be true, the court shall issue an order authorizing the  
20 treatment facility to involuntarily administer antipsychotic  
21 medication to the defendant when and as prescribed by the  
22 defendant's treating psychiatrist. The court shall not order  
23 involuntary administration of psychotropic medication under  
24 subclause (III) of clause (ii) unless the court has first found that  
25 the defendant does not meet the criteria for involuntary  
26 administration of psychotropic medication under subclause (I) of  
27 clause (ii) and does not meet the criteria under subclause (II) of  
28 clause (ii).

29 (iv) In all cases, the treating hospital, facility, or program may  
30 administer medically appropriate antipsychotic medication  
31 prescribed by a psychiatrist in an emergency as described in  
32 subdivision (m) of Section 5008 of the Welfare and Institutions  
33 Code.

34 (v) Any report made pursuant to subdivision (b) shall include  
35 a description of any antipsychotic medication administered to the  
36 defendant and its effects and side effects, including effects on the  
37 defendant's appearance or behavior that would affect the  
38 defendant's ability to understand the nature of the criminal  
39 proceedings or to assist counsel in the conduct of a defense in a  
40 reasonable manner. During the time the defendant is confined in

1 a state hospital or other treatment facility or placed on outpatient  
2 status, either the defendant or the people may request that the court  
3 review any order made pursuant to this subdivision. The defendant,  
4 to the same extent enjoyed by other patients in the state hospital  
5 or other treatment facility, shall have the right to contact the  
6 patients' rights advocate regarding his or her rights under this  
7 section.

8 (C) If the defendant consented to antipsychotic medication as  
9 described in clause (i) of subparagraph (B), but subsequently  
10 withdraws his or her consent, or, if involuntary antipsychotic  
11 medication was not ordered pursuant to clause (ii) of subparagraph  
12 (B), and the treating psychiatrist determines that antipsychotic  
13 medication has become medically necessary and appropriate, the  
14 treating psychiatrist shall make efforts to obtain informed consent  
15 from the defendant for antipsychotic medication. If informed  
16 consent is not obtained from the defendant, and the treating  
17 psychiatrist is of the opinion that the defendant lacks capacity to  
18 make decisions regarding antipsychotic medication as specified  
19 in subclause (I) of clause (ii) of subparagraph (B), or that the  
20 defendant is a danger to others as specified in subclause (II) of  
21 clause (ii) of subparagraph (B), the committing court shall be  
22 notified of this, including an assessment of the current mental  
23 status of the defendant and the opinion of the treating psychiatrist  
24 that involuntary antipsychotic medication has become medically  
25 necessary and appropriate. The court shall provide copies of the  
26 report to the prosecuting attorney and to the attorney representing  
27 the defendant and shall set a hearing to determine whether  
28 involuntary antipsychotic medication should be ordered in the  
29 manner described in subparagraph (B).

30 (3) When the court, after considering the placement  
31 recommendation of the county mental health director required in  
32 paragraph (2), orders that the defendant be confined in a public or  
33 private treatment facility, the court shall provide copies of the  
34 following documents which shall be taken with the defendant to  
35 the treatment facility where the defendant is to be confined:

36 (A) The commitment order, including a specification of the  
37 charges.

38 (B) A computation or statement setting forth the maximum term  
39 of commitment in accordance with subdivision (c).



1 (C) A computation or statement setting forth the amount of  
2 credit for time served, if any, to be deducted from the maximum  
3 term of commitment.

4 (D) State summary criminal history information.

5 (E) Any arrest reports prepared by the police department or  
6 other law enforcement agency.

7 (F) Any court-ordered psychiatric examination or evaluation  
8 reports.

9 (G) The county mental health director's placement  
10 recommendation report.

11 (4) A person subject to commitment under this section may be  
12 placed on outpatient status under the supervision of the county  
13 mental health director or his or her designee by order of the court  
14 in accordance with the procedures contained in Title 15  
15 (commencing with Section 1600) except that where the term  
16 "community program director" appears the term "county mental  
17 health director" shall be substituted.

18 (5) If the defendant is committed or transferred to a public or  
19 private treatment facility approved by the county mental health  
20 director, the court may, upon receiving the written recommendation  
21 of the county mental health director, transfer the defendant to  
22 another public or private treatment facility approved by the county  
23 mental health director. In the event of dismissal of the criminal  
24 charges before the defendant recovers competence, the person  
25 shall be subject to the applicable provisions of Part 1 (commencing  
26 with Section 5000) of Division 5 of the Welfare and Institutions  
27 Code. Where either the defendant or the prosecutor chooses to  
28 contest the order of transfer, a petition may be filed in the court  
29 for a hearing, which shall be held if the court determines that  
30 sufficient grounds exist. At the hearing, the prosecuting attorney  
31 or the defendant may present evidence bearing on the order of  
32 transfer. The court shall use the same standards as are used in  
33 conducting probation revocation hearings pursuant to Section  
34 1203.2.

35 Prior to making an order for transfer under this section, the court  
36 shall notify the defendant, the attorney of record for the defendant,  
37 the prosecuting attorney, and the county mental health director or  
38 his or her designee.

39 (b) Within 90 days of a commitment made pursuant to  
40 subdivision (a), the medical director of the treatment facility to

1 which the defendant is confined shall make a written report to the  
2 court and the county mental health director or his or her designee,  
3 concerning the defendant's progress toward recovery of mental  
4 competence. Where the defendant is on outpatient status, the  
5 outpatient treatment staff shall make a written report to the county  
6 mental health director concerning the defendant's progress toward  
7 recovery of mental competence. Within 90 days of placement on  
8 outpatient status, the county mental health director shall report to  
9 the court on this matter. If the defendant has not recovered mental  
10 competence, but the report discloses a substantial likelihood that  
11 the defendant will regain mental competence in the foreseeable  
12 future, the defendant shall remain in the treatment facility or on  
13 outpatient status. Thereafter, at six-month intervals or until the  
14 defendant becomes mentally competent, where the defendant is  
15 confined in a treatment facility, the medical director of the hospital  
16 or person in charge of the facility shall report in writing to the  
17 court and the county mental health director or a designee regarding  
18 the defendant's progress toward recovery of mental competence.  
19 Where the defendant is on outpatient status, after the initial 90-day  
20 report, the outpatient treatment staff shall report to the county  
21 mental health director on the defendant's progress toward recovery,  
22 and the county mental health director shall report to the court on  
23 this matter at six-month intervals. A copy of these reports shall be  
24 provided to the prosecutor and defense counsel by the court. If the  
25 report indicates that there is no substantial likelihood that the  
26 defendant will regain mental competence in the foreseeable future,  
27 the committing court shall order the defendant to be returned to  
28 the court for proceedings pursuant to paragraph (2) of subdivision  
29 (c). The court shall transmit a copy of its order to the county mental  
30 health director or his or her designee.

31 (c) (1) If, at the end of one year from the date of commitment  
32 or a period of commitment equal to the maximum term of  
33 imprisonment provided by law for the most serious offense charged  
34 in the misdemeanor complaint, whichever is shorter, the defendant  
35 has not recovered mental competence, the defendant shall be  
36 returned to the committing court. The court shall notify the county  
37 mental health director or his or her designee of the return and of  
38 any resulting court orders.

39 (2) Whenever any defendant is returned to the court pursuant  
40 to subdivision (b) or paragraph (1) of this subdivision and it appears

1 to the court that the defendant is gravely disabled, as defined in  
2 subparagraph (A) of paragraph (1) of subdivision (h) of Section  
3 5008 of the Welfare and Institutions Code, the court shall order  
4 the conservatorship investigator of the county of commitment of  
5 the defendant to initiate conservatorship proceedings for the  
6 defendant pursuant to Chapter 3 (commencing with Section 5350)  
7 of Part 1 of Division 5 of the Welfare and Institutions Code. Any  
8 hearings required in the conservatorship proceedings shall be held  
9 in the superior court in the county that ordered the commitment.

10 The court shall transmit a copy of the order directing initiation of  
11 conservatorship proceedings to the county mental health director  
12 or his or her designee and shall notify the county mental health  
13 director or his or her designee of the outcome of the proceedings.

14 (d) The criminal action remains subject to dismissal pursuant  
15 to Section 1385. If the criminal action is dismissed, the court shall  
16 transmit a copy of the order of dismissal to the county mental  
17 health director or his or her designee.

18 (e) If the criminal charge against the defendant is dismissed,  
19 the defendant shall be released from any commitment ordered  
20 under this section, but without prejudice to the initiation of any  
21 proceedings which may be appropriate under Part 1 (commencing  
22 with Section 5000) of Division 5 of the Welfare and Institutions  
23 Code.

24 SEC. 9. Section 1370.02 is added to the Penal Code, to read:

25 1370.02. (a) If the defendant is found mentally competent  
26 during a postrelease community supervision or parole revocation  
27 hearing, the revocation proceedings shall resume. The formal  
28 hearing on the revocation shall occur within a reasonable time  
29 after resumption of the proceedings, but in no event may the  
30 defendant be detained in custody for over 180 days from the date  
31 of arrest.

32 (b) If the defendant is found mentally incompetent, the court,  
33 ~~based upon consideration of the information and recommendations~~  
34 ~~contained in the expert reports required by Section 1369, court~~  
35 shall have discretion to order any of the following:

36 (1) (A) If the court determines that there is a reasonable  
37 likelihood that the defendant may be restored to competency and  
38 returned to court to face the revocation proceedings no later than  
39 180 days from the date of the arrest of the defendant, the court  
40 may order the defendant to undergo treatment as authorized by

1 Section 1370 or 1370.1 for restoring the defendant to competency,  
2 except that:

3 (i) The initial written progress report due to the court pursuant  
4 to subdivision (b) of Section 1370 shall be provided to the court  
5 within 45 days and subsequent progress reports shall be provided  
6 to the court at two-month intervals.

7 (ii) The initial written progress report due to the court under  
8 subdivision (b) of Section 1370.1 shall be provided to the court  
9 within 45 days *of the commitment* and subsequent progress reports  
10 shall be provided within 90 days.

11 (B) If the defendant is restored to competency within 180 days  
12 of arrest, the defendant shall be returned to court under the  
13 procedures required by Section 1372.

14 (C) If the defendant is not restored to competency within 180  
15 days of arrest, the defendant shall be returned to court and the court  
16 shall proceed under paragraph (2) or (3).

17 (2) Dismiss the pending revocation matter and return the  
18 defendant to supervision. If the matter is dismissed pursuant to  
19 this paragraph, the court may also:

20 (A) Modify the terms and conditions of supervision to include  
21 appropriate mental health treatment.

22 (B) Refer the matter to the public guardian of the county of  
23 commitment to initiate conservatorship proceedings.

24 (3) Refer the matter to any local mental health court, reentry  
25 court, or other collaborative justice court available for improving  
26 the mental health of the defendant.

27 (c) Notwithstanding any other law, if a person subject to parole  
28 pursuant to Section 3000.1 or paragraph (4) of subdivision (b) of  
29 Section 3000 is found mentally incompetent, the court shall order  
30 the person to undergo treatment pursuant to Section 1370 for  
31 restoring the person to competency, except that if the person is not  
32 restored to competency within the maximum period of confinement  
33 and the court dismisses the revocation, the court shall return the  
34 person to parole supervision, refer the matter to the public guardian  
35 of the county of commitment to initiate conservatorship  
36 proceedings, or refer the person to other appropriate mental health  
37 treatment based upon any recommendations by the parole agent  
38 and mental health experts.

39 SEC. 10. Section 1370.1 of the Penal Code is amended to read:

1 1370.1. (a) (1) (A) If the defendant is found mentally  
2 competent, the criminal process shall resume, the trial on the  
3 offense charged or hearing on the alleged violation shall proceed,  
4 and judgment may be pronounced.

5 (B) If the defendant is found mentally incompetent and is  
6 developmentally disabled, the trial or judgment shall be suspended  
7 until the defendant becomes mentally competent.

8 (i) Except as provided in clause (ii) or (iii), the court shall  
9 consider a recommendation for placement, which recommendation  
10 shall be made to the court by the director of a regional center or  
11 designee. In the meantime, the court shall order that the mentally  
12 incompetent defendant be delivered by the sheriff or other person  
13 designated by the court to a state hospital or developmental center  
14 for the care and treatment of the developmentally disabled or any  
15 other available residential facility approved by the director of a  
16 regional center for the developmentally disabled established under  
17 Division 4.5 (commencing with Section 4500) of the Welfare and  
18 Institutions Code as will promote the defendant's speedy attainment  
19 of mental competence, or be placed on outpatient status pursuant  
20 to the provisions of Section 1370.4 and Title 15 (commencing with  
21 Section 1600).

22 (ii) However, if the action against the defendant who has been  
23 found mentally incompetent is on a complaint charging a felony  
24 offense specified in Section 290, the prosecutor shall determine  
25 whether the defendant previously has been found mentally  
26 incompetent to stand trial pursuant to this chapter on a charge of  
27 a Section 290 offense, or whether the defendant is currently the  
28 subject of a pending Section 1368 proceeding arising out of a  
29 charge of a Section 290 offense. If either determination is made,  
30 the prosecutor shall so notify the court and defendant in writing.  
31 After this notification, and opportunity for hearing, the court shall  
32 order that the defendant be delivered by the sheriff to a state  
33 hospital or other secure treatment facility for the care and treatment  
34 of the developmentally disabled unless the court makes specific  
35 findings on the record that an alternative placement would provide  
36 more appropriate treatment for the defendant and would not pose  
37 a danger to the health and safety of others.

38 (iii) If the action against the defendant who has been found  
39 mentally incompetent is on a complaint charging a felony offense  
40 specified in Section 290 and the defendant has been denied bail

1 pursuant to subdivision (b) of Section 12 of Article I of the  
2 California Constitution because the court has found, based upon  
3 clear and convincing evidence, a substantial likelihood that the  
4 person's release would result in great bodily harm to others, the  
5 court shall order that the defendant be delivered by the sheriff to  
6 a state hospital for the care and treatment of the developmentally  
7 disabled unless the court makes specific findings on the record  
8 that an alternative placement would provide more appropriate  
9 treatment for the defendant and would not pose a danger to the  
10 health and safety of others.

11 (iv) The clerk of the court shall notify the Department of Justice  
12 in writing of any finding of mental incompetence with respect to  
13 a defendant who is subject to clause (ii) or (iii) for inclusion in his  
14 or her state summary criminal history information.

15 (C) Upon becoming competent, the court shall order that the  
16 defendant be returned to the committing court pursuant to the  
17 procedures set forth in paragraph (2) of subdivision (a) of Section  
18 1372 or by another person designated by the court. The court shall  
19 further determine conditions under which the person may be absent  
20 from the placement for medical treatment, social visits, and other  
21 similar activities. Required levels of supervision and security for  
22 these activities shall be specified.

23 (D) The court shall transmit a copy of its order to the regional  
24 center director or designee and to the Director of Developmental  
25 Services.

26 (E) A defendant charged with a violent felony may not be placed  
27 in a facility or delivered to a state hospital, developmental center,  
28 or residential facility pursuant to this subdivision unless the facility,  
29 state hospital, developmental center, or residential facility has a  
30 secured perimeter or a locked and controlled treatment facility,  
31 and the judge determines that the public safety will be protected.

32 (F) For purposes of this paragraph, "violent felony" means an  
33 offense specified in subdivision (c) of Section 667.5.

34 (G) A defendant charged with a violent felony may be placed  
35 on outpatient status, as specified in Section 1370.4 or 1600, only  
36 if the court finds that the placement will not pose a danger to the  
37 health or safety of others.

38 (H) As used in this section, "developmental disability" means  
39 a disability that originates before an individual attains 18 years of  
40 age, continues, or can be expected to continue, indefinitely and

constitutes a substantial handicap for the individual, and shall not include other handicapping conditions that are solely physical in nature. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

(2) Prior to making the order directing that the defendant be confined in a state hospital, developmental center, or other residential facility, or be placed on outpatient status, the court shall order the regional center director or designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be committed to a state hospital or developmental center or to any other available residential facility approved by the regional center director. A person shall not be admitted to a state hospital, developmental center, or other residential facility or accepted for outpatient status under Section 1370.4 without having been evaluated by the regional center director or designee.

(3) When the court orders that the defendant be confined in a state hospital or other secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other secure treatment facility where the defendant is to be confined:

(A) State summary criminal history information.

(B) Any arrest reports prepared by the police department or other law enforcement agency.

(C) Records of a finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or a pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(4) When the defendant is committed to a residential facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a facility other than a state hospital or other secure treatment facility,

1 the court shall order that notice be given to the appropriate law  
2 enforcement agency or agencies having local jurisdiction at the  
3 site of the placement facility of a finding of mental incompetence  
4 pursuant to this chapter arising out of a charge of a Section 290  
5 offense.

6 (5) (A) If the defendant is committed or transferred to a state  
7 hospital or developmental center pursuant to this section, the court  
8 may, upon receiving the written recommendation of the executive  
9 director of the state hospital or developmental center and the  
10 regional center director that the defendant be transferred to a  
11 residential facility approved by the regional center director, order  
12 the defendant transferred to that facility. If the defendant is  
13 committed or transferred to a residential facility approved by the  
14 regional center director, the court may, upon receiving the written  
15 recommendation of the regional center director, transfer the  
16 defendant to a state hospital or developmental center or to another  
17 residential facility approved by the regional center director.

18 In the event of dismissal of the criminal action or revocation  
19 proceedings before the defendant recovers competence, the person  
20 shall be subject to the applicable provisions of the  
21 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
22 5000) of Division 5 of the Welfare and Institutions Code) or to  
23 commitment or detention pursuant to a petition filed pursuant to  
24 Section 6502 of the Welfare and Institutions Code.

25 The defendant or prosecuting attorney may contest either kind  
26 of order of transfer by filing a petition with the court for a hearing,  
27 which shall be held if the court determines that sufficient grounds  
28 exist. At the hearing, the prosecuting attorney or the defendant  
29 may present evidence bearing on the order of transfer. The court  
30 shall use the same standards as used in conducting probation  
31 revocation hearings pursuant to Section 1203.2.

32 Prior to making an order for transfer under this section, the court  
33 shall notify the defendant, the attorney of record for the defendant,  
34 the prosecuting attorney, and the regional center director or  
35 designee.

36 (B) If the defendant is committed to a state hospital or secure  
37 treatment facility pursuant to clause (ii) or (iii) of subparagraph  
38 (B) of paragraph (1) and is subsequently transferred to another  
39 facility, copies of the documents specified in paragraph (3) shall  
40 be taken with the defendant to the new facility. The transferring



1 facility shall also notify the appropriate law enforcement agency  
2 or agencies having local jurisdiction at the site of the new facility  
3 that the defendant is a person subject to clause (ii) or (iii) of  
4 subparagraph (B) of paragraph (1).

5 (b) (1) Within 90 days of admission of a person committed  
6 pursuant to subdivision (a), the executive director or designee of  
7 the state hospital, developmental center, or other facility to which  
8 the defendant is committed, or the outpatient supervisor where the  
9 defendant is placed on outpatient status, shall make a written report  
10 to the committing court and the regional center director or a  
11 designee concerning the defendant's progress toward becoming  
12 mentally competent. If the defendant has not become mentally  
13 competent, but the report discloses a substantial likelihood the  
14 defendant will become mentally competent within the next 90  
15 days, the court may order that the defendant shall remain in the  
16 state hospital, developmental center, or other facility or on  
17 outpatient status for that period of time. Within 150 days of an  
18 admission made pursuant to subdivision (a) or if the defendant  
19 becomes mentally competent, the executive director or designee  
20 of the hospital or developmental center or person in charge of the  
21 facility or the outpatient supervisor shall report to the court and  
22 the regional center director or his or her designee regarding the  
23 defendant's progress toward becoming mentally competent. The  
24 court shall provide to the prosecutor and defense counsel copies  
25 of all reports under this section. If the report indicates that there  
26 is no substantial likelihood that the defendant has become mentally  
27 competent, the committing court shall order the defendant to be  
28 returned to the court for proceedings pursuant to paragraph (2) of  
29 subdivision (c). The court shall transmit a copy of its order to the  
30 regional center director or designee and to the executive director  
31 of the developmental center.

32 (2) A defendant who has been committed or has been on  
33 outpatient status for 18 months, and is still hospitalized or on  
34 outpatient status, shall be returned to the committing court where  
35 a hearing shall be held pursuant to the procedures set forth in  
36 Section 1369. The court shall transmit a copy of its order to the  
37 regional center director or designee and the executive director of  
38 the developmental center.

39 (3) If it is determined by the court that no treatment for the  
40 defendant's mental impairment is being conducted, the defendant

1 shall be returned to the committing court. A copy of this order  
2 shall be sent to the regional center director or designee and to the  
3 executive director of the developmental center.

4 (4) At each review by the court specified in this subdivision,  
5 the court shall determine if the security level of housing and  
6 treatment is appropriate and may make an order in accordance  
7 with its determination.

8 (c) (1) (A) At the end of three years from the date of  
9 commitment or a period of commitment equal to the maximum  
10 term of imprisonment provided by law for the most serious offense  
11 charged in the information, indictment, or misdemeanor complaint,  
12 or the maximum term of imprisonment provided by law for a  
13 violation of probation or mandatory supervision, whichever is  
14 shorter, a defendant who has not become mentally competent shall  
15 be returned to the committing court.

16 (B) The court shall notify the regional center director or designee  
17 and the executive director of the developmental center of that  
18 return and of any resulting court orders.

19 (2) (A) Except as provided in subparagraph (B), in the event  
20 of dismissal of the criminal charges before the defendant becomes  
21 mentally competent, the defendant shall be subject to the applicable  
22 provisions of the Lanterman-Petris-Short Act (Part 1 (commencing  
23 with Section 5000) of Division 5 of the Welfare and Institutions  
24 Code), or to commitment and detention pursuant to a petition filed  
25 pursuant to Section 6502 of the Welfare and Institutions Code. If  
26 it is found that the person is not subject to commitment or detention  
27 pursuant to the applicable provision of the Lanterman-Petris-Short  
28 Act (Part 1 (commencing with Section 5000) of Division 5 of the  
29 Welfare and Institutions Code) or to commitment or detention  
30 pursuant to a petition filed pursuant to Section 6502 of the Welfare  
31 and Institutions Code, the individual shall not be subject to further  
32 confinement pursuant to this article and the criminal action remains  
33 subject to dismissal pursuant to Section 1385. The court shall notify  
34 the regional center director and the executive director of the  
35 developmental center of any dismissal.

36 (B) In revocation proceedings alleging a violation of mandatory  
37 supervision in which the defendant remains incompetent upon  
38 return to court under subparagraph (A), the defendant shall be  
39 subject to the applicable provisions of the Lanterman-Petris-Short  
40 Act (Part 1 (commencing with Section 5000) of Division 5 of the

1 Welfare and Institutions Code), or to commitment and detention  
2 pursuant to a petition filed pursuant to Section 6502 of the Welfare  
3 and Institutions Code. If it is found that the person is not subject  
4 to commitment or detention pursuant to the applicable provision  
5 of the ~~Lanternman-Petris-Short~~ *Lanternman-Petris-Short* Act (Part  
6 1 (commencing with Section 5000) of Division 5 of the Welfare  
7 and Institutions Code) or to commitment or detention pursuant to  
8 a petition filed pursuant to Section 6502 of the Welfare and  
9 Institutions Code, the court shall reinstate mandatory supervision  
10 and modify the terms and conditions of supervision to include  
11 appropriate mental health treatment or refer the matter to a local  
12 mental health court, reentry court, or other collaborative justice  
13 court available for improving the mental health of the defendant.  
14 Actions alleging a violation of mandatory supervision shall not be  
15 subject to dismissal under Section 1385.

16 (d) Except as provided in subparagraph (B) of paragraph (2) of  
17 subdivision (c), the criminal action remains subject to dismissal  
18 pursuant to Section 1385. If at any time prior to the maximum  
19 period of time allowed for proceedings under this article, the  
20 regional center director concludes that the behavior of the defendant  
21 related to the defendant's criminal offense has been eliminated  
22 during time spent in court-ordered programs, the court may, upon  
23 recommendation of the regional center director, dismiss the  
24 criminal charges. The court shall transmit a copy of any order of  
25 dismissal to the regional center director and to the executive  
26 director of the developmental center.

27 (e) For the purpose of this section, "secure treatment facility"  
28 shall not include, except for state mental hospitals, state  
29 developmental centers, and correctional treatment facilities, a  
30 facility licensed pursuant to Chapter 2 (commencing with Section  
31 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter  
32 3.2 (commencing with Section 1569) of, Division 2 of the Health  
33 and Safety Code, or a community board and care facility.

34 SEC. 11. Section 1370.5 of the Penal Code is amended to read:

35 1370.5. (a) A person committed to a state hospital or other  
36 public or private mental health facility pursuant to the provisions  
37 of Section 1370, 1370.01, 1370.02, or 1370.1, who escapes from  
38 or who escapes while being conveyed to or from a state hospital  
39 or facility, is punishable by imprisonment in a county jail not to  
40 exceed one year or in the state prison for a determinate term of

1 one year and one day. The term of imprisonment imposed pursuant  
2 to this section shall be served consecutively to any other sentence  
3 or commitment.

4 (b) The medical director or person in charge of a state hospital  
5 or other public or private mental health facility to which a person  
6 has been committed pursuant to the provisions of Section 1370,  
7 1370.01, 1370.02, or 1370.1 shall promptly notify the chief of  
8 police of the city in which the hospital or facility is located, or the  
9 sheriff of the county if the hospital or facility is located in an  
10 unincorporated area, of the escape of the person, and shall request  
11 the assistance of the chief of police or sheriff in apprehending the  
12 person, and shall within 48 hours of the escape of the person orally  
13 notify the court that made the commitment, the prosecutor in the  
14 case, and the Department of Justice of the escape.

15 SEC. 12. Section 1371 of the Penal Code is amended to read:

16 1371. The commitment of the defendant, as described in  
17 Section 1370, 1370.1, *1370.01*, or 1370.02, exonerates his or her  
18 bail, or entitles a person, authorized to receive the property of the  
19 defendant, to a return of any money he or she may have deposited  
20 instead of bail, or gives, to the person or persons found by the court  
21 to have deposited any money instead of bail on behalf of the  
22 defendant, a right to the return of that money.

23 SEC. 13. Section 1373 of the Penal Code is amended to read:

24 1373. The expense of sending the defendant to the state hospital  
25 or other facility, and of bringing him or her back, are chargeable  
26 to the county in which the indictment was found, information was  
27 filed, or revocation proceeding was held; but the county may  
28 recover the expense from the estate of the defendant, if he or she  
29 has any, or from a relative, bound to provide for and maintain him  
30 or her.

31 SEC. 14. Section 1375.5 of the Penal Code is amended to read:

32 1375.5. (a) Time spent by a defendant in a hospital or other  
33 facility as a result of a commitment therein as a mentally  
34 incompetent pursuant to this chapter shall be credited on the term  
35 of imprisonment, if any, for which the defendant is sentenced in  
36 the criminal case which was suspended pursuant to Section ~~1370~~  
37 ~~or 1370.1~~, *1370, 1370.1, or 1370.01*.

38 (b) Time spent by an offender in a hospital or other facility as  
39 a result of a commitment as a mentally incompetent pursuant to

1 Section 1370.02 shall be credited toward any period of revocation  
2 or remaining term of supervision that was suspended.

3 (c) As used in this section, “time spent in a hospital or other  
4 facility” includes days a defendant is treated as an outpatient  
5 pursuant to Title 15 (commencing with Section 1600) of Part 2.

6 SEC. 15. If the Commission on State Mandates determines  
7 that this act contains costs mandated by the state, reimbursement  
8 to local agencies and school districts for those costs shall be made  
9 pursuant to Part 7 (commencing with Section 17500) of Division  
10 4 of Title 2 of the Government Code.